IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5592 of 2003
SPECIAL CIVIL APPLICATION No 5676 of 2003
SPECIAL CIVIL APPLICATION No 5682 of 2003
SPECIAL CIVIL APPLICATION No 5684 of 2003

WITH

SPECIAL CIVIL APPLICATION No 7165 of 2003
SPECIAL CIVIL APPLICATION No 7166 of 2003
SPECIAL CIVIL APPLICATION No 7176 of 2003

WITH

CIVIL APPLICATION No 3548 of 2003
CIVIL APPLICATION No 3549 of 2003
CIVIL APPLICATION No 3550 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA DISTRICT COOPPERATIVEMILK PRODUCERS UNION LTD

Versus

PB WAGHADIYA, JOINT REGISTRAR AND MEMBER BOARD OF NOMINEES

Appearance:

1. Special Civil Applications No. 5592,5676,5682,5684 of 2003
MR BS PATEL with MR PUSHPADATTA J VYAS with MRS RB PATEL for Petitioners

MR ANSHIN H DESAI for Respondent No. 1-2
MR MIHIR JOSHI for Respondent No. 2.
MS MITA PANCHAL, AGP for Respondent No.1.

2. Special Civil Application No.7165,7166,7176 of 2003
MR ND NANAVATI for Petitioners.
MR BS PATEL for Respondent No. 1

3. Civil Applications No. 3548,3549,3550 of 2003
MR BS PATEL for Applicant
MR ND NANAVATI for Opponent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2003

COMMON ORAL JUDGEMENT

Special Civil Applications No.5592, 5676, 5682 and 5684 of 2003 are filed under Article 226 of the Constitution of India challenging the order passed by the learned Registrar, Board of Nominees, Vadodara below an application Exh.5 in Arbitration Suits No. 419, 430, 431 and 432 of 2003 respectively filed by the present respondent No.2 who are the original plaintiffs in the respective suits. The petitioner has prayed for the dismissal of the said Arbitration Suits pending before the learned Registrar, Board of Nominees, Vadodara as per Annexure "A" and also prayed for quashing and setting aside the orders passed by the respondent No.1 as per Annexure "B" dtd. 15.04.2003 / 22.04.2003 and extension thereof, in the respective petitions.

2. Special Civil Applications No.7165, 7166 and 7176 of 2003 are filed by the petitioners, original plaintiffs in Arbitration Suits No. 432, 430 and 431 of 2003 respectively, challenging the order dtd. 20.05.2003 passed below an application Exh. 17 in each of the Arbitration Suits vacating the ex-parte ad-interim relief granted on 22.04.2003 and returning the plaint to the original plaintiffs. This Court has stayed the said order of the learned Registrar, Board of Nominees, Vadodara by an order passed on 28.05.2003. The respondents in all these three petitions have moved Civil Applications under Article 226 (3) of the Constitution of India for vacating the said ad-interim relief granted by this Court on 28.05.2003.

3. It is in the above premises and background, all these matters are heard together on 16.06.2003 and after hearing the learned advocates appearing for the respective parties in all these matters at length, all

these matters are kept for orders today i.e. 20.06.2003. Since the parties were heard at length on the respective petitions and/or applications and since the parties have agreed that the matter should be disposed of finally looking to the urgency and the issue involved in the matter, all these matters are disposed of by this common judgment.

4. As far as Special Civil Applications No. 5592, 5676, 5682 and 5684 of 2003 are concerned, they are dealing with the ad-interim order passed by the learned Registrar, Board of Nominees, Vadodara below an application Exh.5 filed in the respective Arbitration Suits and since the facts are more or less similar, they are put in one group and facts stated in Special Civil Application No. 5592 of 2003 are narrated here for the sake of convenience.

5. The petitioner in all these four petitions is a federal society established with an aim and object of uplifting the milk producers of the different villages of the District Vadodara. The petitioner collects the milk from the affiliated societies and it is processing the milk, and milk products are marketed in Vadodara District more particularly in Vadodara city. The entire operation of the petitioner is based on pooling system.

6. As per the approved byelaws of the petitioner society, federal societies can become the member and 1/10th members who are not producing the milk can also become the member of the petitioner as per bye law no.7. As per by-law No.7.3 agents, contractors, suppliers and their sureties have to become nominal members of the petitioner and therefore their nominal membership should exist during the operation of their commercial transaction with the petitioner. The petitioner submitted that the nominal member shall have to pay Rs.11/- for getting a nominal membership and the nominal membership is always given if a particular contract is awarded to any person or institute and they shall have no right to vote and they do not possess the share of the petitioner society.

7. It is further submitted by the petitioner that the milk products of the petitioner society are sold at different centres more particularly in Vadodara City. Previously the petitioner was giving centres for distribution of milk and milk products to different persons. As such the respondent No.2 in this petition was allotted milk centre and after entering into agreement with the petitioner, she had given a deposit of

Rs.4 Lakhs and the respondent No.2 had been allotted the centre as her tender was found highest. The term of the contract was to expire on 15.04.2003. In pursuance of the agreement, respondent No.2 was admitted as a nominal member of the petitioner society. However, on expiry of the contract, a new contract was required to be given and for that purpose, the petitioner society invited tender by publishing an advertisement in the newspaper. The respondent No.2 in pursuance to the said advertisement submitted the tender but after opening the same and after carrying out the negotiations, it was found that respondent No.2's tender was not the highest one and hence, it was not accepted and the tender of other party was accepted.

8. It is further stated that instead of handing over the possession of the centre to the petitioner, in pursuance of the letter written by the petitioner, the respondent No.2 approached the Registrar, Board of Nominees, Vadodara by filing Arbitration Suit and submitted an application for interim relief which was granted by respondent No.1, the learned Registrar, Board of Nominees, Vadodara on 15.04.2003.

9. It is averred and alleged in the petition that the respondent No.1 was quite aware of the fact that respondent No.1 had performed the functions of Special Auditor in the petitioner society in the year of 1991-92 and 1992-93 and hence, he has no jurisdiction as per the Provisions contained in Section 98 of the Gujarat Co-operative Societies Act, to pass any order either in favour of the petitioner or against the petitioner. Despite this fact, respondent No.1 has passed an order granting ad-interim relief and registering the Arbitration Suit filed by the respondent No.2.

10. It is further stated that the State Government under the provisions of Section 3 of the Act has conferred main powers of the Registrar from Section 96 to 101 of the Act, with the Registrar's Nominee. It is further stated that though the suit was outside the purview of Section 96 of the Act and though the respondent No.1 has no authority to pass any order, the respondent No.1 has not only registered the suit but has granted the stay extending the same from time to time. The respondent No.2 has not succeeded in getting the contract and yet, respondent No.2 is enjoying the contract without any valid extension given by the petitioner society and the same is done by filing a suit before the Nominee's Court which has no jurisdiction to entertain the said suit.

11. It is in this background of the matter, it is stated that the petitioner has approached this Court, without entering into any factual dispute and by invoking the writ jurisdiction under Article 226 of the Constitution of India.

12. The impugned order is passed by the respondent No.1 on 15.04.2003 and on 22.04.2003 in other three petitions whereas the present petition is filed on 28.04.2003. The petitioner has also approached the Registrar, Board of Nominees, Vadodara by filing a pursis on 09.05.2003 and on that pursis, respondent No.1 has passed an order on 20.05.2003 vacating the ad-interim relief granted by him. This second order passed by the Registrar, Board of Nominees, Vadodara gave rise to the petitions being Special Civil Applications No. 7165, 7166 and 7176 of 2003. Since in these petitions, this Court has granted interim relief in terms of para 9 (B) of the respective petitions, the respondents in these petitions and the original defendants in the suit who are also the petitioners in the first group of petitions have filed Civil Applications under Article 226 (3) of the Constitution of India for vacating the said interim relief granted by this Court on 28.05.2003.

13. As far as Special Civil Applications No. 7165, 7166 and 7176 of 2003 are concerned, the petitioners have challenged the order passed by the Registrar, Board of Nominees, Vadodara on 20.05.2003 below an application Exh.17, on the ground that the said order is absolutely illegal and in violation of the principles of natural justice as no opportunity was given to the petitioners in this group of petitions. It is further stated that the copy of the pursis which was filed by the respondents in this group of petitions who are original defendants in each of the suits was not given to the present petitioners and the order was obtained behind the back of the petitioners. It is further stated that respondents in the present petitions have mainly challenged the said order on the ground that as per the provisions contained in Section 98 of the Act, the Registrar, Board of Nominees, Vadodara has no jurisdiction to hear and decide the suit of the petitioners as learned Board of Nominees has worked as a Special Auditor of the respondent in the year 1991 - 92 and 1992 - 93 and hence, the Proviso to Section 98 (1) of the Act prohibits such a nominee from hearing the suit. It is further submitted that the said Provision, however, no where empowers the Registrar to return the plaint to the petitioners. Sub-section 2 provides for procedure in such an eventuality and the

same empowers the Registrar to transfer such a dispute from that particular Nominee to another Nominee or to decide the dispute himself. The said order was further challenged on the ground that though the present respondent has filed petition before this Court against the order passed below an application Exh.5 in the suit, the respondent has raised the same contention in the pursis on which the order was obtained. It is also challenged on the ground that the petitioners in this group of petitions are having a very strong case on merits and the interim order passed below an application Exh.5 cannot be vacated in this manner which would prejudicially affect the interest of the petitioners in this second group of petitions.

14. Considering the above averments and submissions made in the petition, this Court has issued NOTICE and granted ad-interim relief in terms of para 9 (B) of the petition. The prayer made in para 9 (B) was to the effect that the order passed by the Board of Nominees, Vadodara on 20.05.2003 was stayed and the order passed below an application Exh.5 on 22.04.2003 was ordered to be given effect to.

15. On issuance of notice in this group of petitions, the respondent has filed an application under Article 226 (3) of the Constitution of India and prayed for vacation of the ex-parte ad-interim relief granted on 28.05.2003 in favour of the petitioners who are the original plaintiffs before the Nominee's Court.

16. All these matters are heard together. Looking to the issue involved in the matter, the Court is of the view that the matters can be finally disposed of and since there being no objection to this proposal from either of the side, all these matters are taken up for final hearing.

17. As far as first group of petitions, namely, Special Civil Applications No. 5592, 5676, 5682 and 5684 of 2003 are concerned, Mr. B.S. Patel, learned advocate appearing for the petitioners submitted that in view of the Provisions contained in Section 2 (17) read with Section 3 (3) read with Section 98 (1) and the Proviso thereto of the Act, read with Notification No. GHKH - 24 - 91 / DDC 1188 / 5204 / J dtd. 30.03.1991, with item No.4 of the schedule attached therewith, the Registrar, Board of Nominees has no power, authority or jurisdiction to register the suit or to hear and grant ad-interim relief and hence, the order passed by him on 15.04.2003 or 22.04.2003 is exfacie, illegal, without jurisdiction

and void-ab-initio. Hence, not only the order granting ad-interim relief but the Lavad Suit itself deserves to be quashed and set aside. He has further submitted that the Registrar, Board of Nominees, Vadodara was appointed as Special Auditor (Milk) in the petitioner union in the year of 1991 - 92 and 1992 - 93 and he has audited the accounts of the petitioner union. He has further submitted that Section 98 of the Act clearly provides that no person who has previously audited the accounts of a Society can be appointed as Nominee and admittedly the respondent No.1 has audited the accounts of the petitioner union and, therefore, he has no jurisdiction to entertain the suit or to pass any order either in favour of or against the petitioner union. For this proposition, Mr. B.S. Patel has relied on the decision of this Court in the case of GUJARAT STATE CO. OP. MARKETING FEDERATION LTD. AND OTHERS V/s. R. H. BHATT, BOARD OF NOMINEES (CO. OP. SOCIETIES), AHMEDABAD AND OTHERS) reported in 25 (2) G.L.R. 1203 wherein it is held that any order passed by a person who was previously connected and audited the accounts of a Society is without jurisdiction, ultravires and ab-initio void. Mr. Patel has further submitted that even on earlier occasion, the petitioner Union in some other matter had approached this Court challenging the order passed by the Board of Nominees, Vadodara entertaining a Lavad Suit and granting exparte ad-interim stay against the petitioner for which it had no jurisdiction. This Court, after considering various provisions of the Act had dismissed the suit pending before the Board of Nominees in the case of VADODARA DIST. CO.OP. MILK PRODUCERS UNION LTD. V/s. K.V. ACHARYA AND DEPUTY REGISTRAR AND MEMBER OF BOARD OF NOMINEES AND ANOTHER reported in 38 (2) GLR 1493. Mr. Patel has further submitted that the case of the original plaintiffs before the Board of Nominees was that they were working either as Agent or Distributors of the petitioner union and were selling milk products and getting commission. He has further submitted that vires of Section 96 of the Act had been challenged before this Court in case of RASIKLAL PATEL AND OTHERS V/s. KAILASHGAURI RAMANLAL MEHTA AND OTHERS reported in 12 G.L.R. 385. This Court has struck down the provisions of any past or present agent and deceased agent. Mr. Patel has, therefore, submitted that the suit which is filed by the Agent under Section 96 of the Act and entertained by respondent No.1 even after knowing fully well that in 1971, provision pertaining to agent has been struck down by the Division Bench of this Court, is invalid, without jurisdiction and cannot be entertained by the Court of learned Board of Nominees. He has further submitted that the word Distributor is not at all

reflected in Section 96 of the Act and hence, suit filed by the Distributor cannot be entertained by the Registrar, Board of Nominees, Vadodara.

18. On the basis of the aforesaid submission, Mr. Patel has emphatically urged before this Court that the order passed by the Board of Nominees granting ex-parte ad-interim injunction in favour of the original plaintiffs is exfacie, illegal, without jurisdiction and void-ab-initio and hence, it deserves to be quashed and set aside.

19. Mr. Mihir Joshi, learned advocate appearing for the respondent No.2 / original plaintiff in this group of petitions submitted that Section 3 (1) of the Act deals with the appointment of Registrar of Co. Operative Societies for the State and to assist him, Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars and other persons are appointed by the State. The State Government is empowered to delegate either general or special powers on the persons so appointed and all these persons are working under the general guidance and superintendence and control of the Registrar. He has further submitted that respondent No.1 to whom the dispute was referred to may not be competent to decide the dispute by virtue of Proviso to Section 98 (1) of the Act, because of his being Special Auditor of the petitioner society in the year 1991 - 92 and 1992 93, the decision taken by him as such in petitioner's case should not have been held as illegal, ultra virus or without jurisdiction, in view of the defacto doctrine. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of ACHANTI SREENIVASA RAO AND OTHERS V/s. STATE OF ANDHRA PRADESH reported in 1981 (3) SCC 133 in which Defacto doctrine was explained. It is stated that the doctrine is now well established that "the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure". It is further observed that the doctrine is found on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. On the basis of these observations, Mr. Mihir

Joshi has submitted that even if the appointment of the Board of Nominee is held to be illegal, the act done by him who holds the office de facto cannot be easily undone. Mr. Mihir Joshi has further submitted that the order passed by the respondent No.1 cannot be said to be an order per se illegal or without jurisdiction. He has further submitted that Section 98 (2) of the Act is having self-contained procedure which says that whether any dispute is referred under Sub-section (1) for decision to the Registrar's Nominee or Board of Nominees, the Registrar may at any time, for reasons to be recorded in writing withdraw such dispute from his Nominee, or Board of Nominees, and may decide the dispute himself, or refer it again for decision to any other Nominee or Board of Nominees, appointed by him. In view of the Provisions contained in Section 98 (2) of the Act, it is not open for the respondent No.1 either to vacate the ad-interim relief granted by him or to return the plaint. Mr. Joshi has further submitted that the decision of RASIKLAL PATEL AND OTHERS V/s. KAILASGAURI RAMANLAL MEHTA AND OTHERS (SUPRA) relied on by the petitioners would not lead the petitioners' case any further as in that case, the question of Nominal Membership was not there at all. Here, in case of respondent No.2, admittedly, respondent No.2 is the Nominal member of the petitioner society. Even otherwise, the principle of dual membership is accepted and for that purpose, Mr. Joshi has relied on the decision of the Hon'ble Supreme Court in the case of DECCAN MERCHANTS CO-OPERATIVE BANK LTD. V/s. M/S. DALICHAND JUGRAJ JAIN AND OTHERS reported in A.I.R. 1969 S.C. 1320. In para 31 of the said judgment, it is observed by the Hon'ble Supreme Court that when the original owner executed the lease, he was not acting as a member but as a mortgagor in possession, and, therefore, the Bank's claim does not fall within Section 91 (1) of the Act. Here in the present case also, when the petitioner enters into agreement with the respondent No.2 for selling and/or distributing the milk and milk products, the respondent No.2 is acting as an Agent and the petitioner is acting as a principal. The fact however remains that the respondent No.2 is also enrolled as a Nominal member of the petitioner society and as a Nominal member, the dispute can certainly be termed as the dispute between the Member and the society which falls within the purview of Section 96 of the Act. With regard to the petitioner's case that the contract have come to an end on expiry of the stipulated period and no powers are vested in the Board of Nominees to extend the said Contract, Mr. Joshi has submitted that the agreement did contain the clause regarding the extension of period by mutual consent, and because of that

petitioner must have shown the reasonable ground for not extending the contract and the decision of the petitioner not extending the contract being arbitrary and malafide, the Board of Nominees Court can certainly go into that aspect and hence, it cannot be said that the order is without jurisdiction.

20. On the basis of the aforesaid submission, Mr. Mihir Joshi has strongly supported the order passed by the learned Registrar, Board of Nominees, Vadodara granting ad-interim relief and since alternative remedy is available to the petitioners, the relief claimed in the petition should not be granted to the petitioners.

21. Mr. N.D. Nanavati, learned Senior advocate appearing for the petitioners in Special Civil Applications No. 7165, 7166 and 7176 of 2003 has submitted that the order passed by the learned Registrar, Board of Nominees, Vadodara on 20.05.2003 below an application Exh.17 was exfacie illegal and contrary to the well settled principles of natural justice. He has further submitted that no opportunity was given to the petitioners before passing such order nor even the endorsement of the petitioners was obtained on the pursis which was filed before the learned Registrar, Board of Nominees. He has further submitted that even the matter was not on the board and the petitioners were not aware about passing of such order. He has, therefore, submitted that this Court has rightly protected the petitioners by staying the order dtd. 20.05.2003 passed by the learned Registrar, Board of Nominees, Vadodara.

22. I have heard the learned advocates appearing for the respective parties in this two group of petitions and I have also gone through the averments made in the respective petitions as well as the reply filed in the respective petitions. I have also perused the authorities relied on by the respective parties in support of their contentions. To appreciate the controversy involved in all these matters and also to consider the submissions in their proper perspective, it is necessary to have a close look at the Provisions contained in Section 98 (1) of the Act which is quoted as under :-

98. Settlement of disputes.

(1) If the Registrar is satisfied that any matter, referred to him is a dispute, within the meaning of Section 96 the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee, or a board

of nominees, appointed by the Registrar:

Provided that no person who is connected with a dispute or with the society at any stage or has previously inspected the society or audited its accounts shall be appointed as a nominee or as member of the board of nominees to settle the dispute.

(2) Where any dispute is referred under sub-section (1) for decision to the Registrar's nominee or board of nominees, the Registrar may at any time, for reasons to be recorded in writing withdraw such dispute from his nominee, or board of nominees, and may decide the dispute himself, or refer it again for decision to any other nominee, or board of nominees, appointed by him.

23. In the case of GUJARAT STATE CO. OPERATIVE MARKETING FEDERATION LTD. AND OTHERS V/s. R.H. BHATT, BOARD OF NOMINEES (CO. OP. SOCIETIES), AHMEDABAD AND OTHERS, (SUPRA) it was held that the language of the Proviso to Section 98 (1) is in negative term and issues a mandate that no person who is connected with the society in the manner set in the proviso shall be appointed as a nominee to settle the dispute. It is further observed that the Nominee or a Nominee of the Board of Nominees is an adjudicating authority which decides the right of the parties and such decision is treated as final and conclusive. It is an established principle of law as well as principle of natural justice that no man can be a judge in his own cause. The deciding authority must be impartial and without bias. It is also an established principle of law that justice should not only be done, but manifestly and undoubtedly be seem to be done. Just like Ceaser's wife, it should be above suspicion. The petitioner's case is more stronger in the sense that a positive Provision of law has been made by the legislature debarring such persons from adjudicating the dispute. Based on these observations, the Court has taken the view that the Arbitration Suit filed by the respondent No.2 against the petitioner society cannot be heard by respondent No.1 who was at one time Director of the petitioner society. Here also, respondent No.1 was a Special Auditor of the petitioner society and the Arbitration Suit filed by the respondent No.2 against the petitioner society cannot be heard by respondent No.1 by virtue of the Provisions contained in Section 98 (1) read with Proviso thereto. A submission of Mr. Mihir Joshi that this decision of this Court should be treated as per inqurium as the defacto

doctrine as propounded by the Hon'ble Supreme Court in the case of ACHANTI SREENIVASA RAO AND OTHERS V/s. STATE OF ANDHRA PRADESH (SUPRA) has not been considered because of the fact that the same might not have been sited nor argued before the Court. It is true that the said doctrine was not pressed into service though an attempt was made without making any reference to this doctrine and this Court has not gone into it. Even otherwise, the said doctrine cannot be applied in the facts of the present case as the holding of office by the respondent No.1 is not under challenge. What is under challenge is the assumption of jurisdiction by the respondent No.1 contrary to the Provisions contained in Section 98 (1) of the Act. The petitioner has not challenged the very appointment of the respondent No.1 as Registrar, Board of Nominees, Vadodara nor the petitioner has challenged all his decisions, orders etc. The petitioner is challenging the order passed by respondent No.1 granting ad-interim relief to the respondent No.2 in the Lavad Suit violating the Provisions contained in Section 98 (1) of the Act. The Act is not defacto performed by the respondent No.1 within the scope of his assumed official authority. The petitioner does not canvass that there is any defect with his title to the office but the assumption of jurisdiction is in dispute and that was the issue before this Court, in earlier case too. The issue being identical and the case of the Hon'ble Supreme Court is distinguishable on facts, I am of the opinion that the order passed by the respondent No.1 granting ad-interim relief to the respondent No.2 / original plaintiff is absolutely illegal, ultra virus, violating the mandatory Provisions contained in Section 98 (1) of the Act and without jurisdiction and hence, the said order can certainly be challenged before this Court by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, I quash and set aside the said order.

24. While quashing and setting aside the order granting ad-interim relief, passed by the respondent No.1, I am also of the view that Lavad Suit filed before the respondent No.1 is not maintainable as the respondent No.1 has no jurisdiction to register the said suit, not only on the ground that Provisions contained in Section 98 (1) read with Proviso thereto debars the Respondent No.1 from entertaining the said suit, but also on the ground that the dispute raised is outside the scope of Section 96 of the Act as what was challenged by the original plaintiff in the suit was the affairs of the petitioner union and not the business of the petitioner union under Section 96 of the Act and as per the law

settled by the Hon'ble Supreme Court in the case of DECCAN MERCHANTS CO.OPERATIVE BANK LTD. V/s. M/S. DALICHAND JUGRAJ JAIN AND OTHERS (SUPRA), the Nominee's Court under Section 96 has no jurisdiction to decide the same.

25. Moreover, Respondent No.2 / original plaintiffs are either agent or distributor, the dispute if any, with whom does not fall within the ambit of Section 96 of the Act. After execution of the contract and on payment of Rs.11/- nominal membership was obtained by them. But, neither any Share Certificate was issued in their favour nor any voting right is conferred on them. They are, therefore, not considered to be the members, which bring them within the purview of Section 96 of the Act. Taking any view of the matter, it is not a dispute between the member and the society and, therefore, the Provisions of Section 96 of the Act are not applicable at all, which entitles the learned Registrar, Board of Nominees, Vadodara to entertain the said suit. Even otherwise, this Court in the case of M/s. JAISU AND CO. V/s. M/S. MEERA AGENCY AND ANOTHER (SUPRA) (1986 (1) G.L.R. 334) has taken the view that after the expiry of the contractual period, the Court has no jurisdiction to grant the contract in favour of the plaintiff. At the most, if the plaintiff finally proves that illegally, his tender was not accepted and contract was not given to him and thereby, he has suffered any damage, he would be compensated. By granting this type of injunction, the learned Judge has granted contract in favour of the plaintiff without deciding the matter and without considering the merits of the case. Here also, by virtue of granting ad-interim relief, the period of contract is extended, which is not within his jurisdiction.

26. What flows from the aforesaid discussion is that because of the applicability of the Proviso to Section 98 (1) of the Act, because of non-applicability of the Provisions of Section 96 of the Act since the dispute being not between the member and the society and because of the Court, not being vested with the power of extending the period of contract, after its expiry, in the guise of an ad-interim order, the Lavad Suits filed before the learned Registrar, Board of Nominees, Vadodara are not maintainable. In this view of the matter, and after having found myself in full agreement with the view taken by the learned Single Judge of this Court, in the case of VADODARA DISTRICT CO.OPERATIVE MILK PRODUCERS UNION LTD. V/s. K.V. ACHARYA AND DEPUTY REGISTRAR AND MEMBER OF BOARD OF NOMINEES AND ANOTHER (SUPRA), I hereby quash the Lavad Suit Nos. 419, 430, 431 and 432 of 2003

pending before the respondent No.1.

27. In this view of the matter, Special Civil Applications No. 5592, 5676, 5682 and 5684 of 2003 are hereby allowed. Since with the consent of the parties, all these matters were heard finally, the formality of issuance of RULE was considered to be waived and hence, RULE is made absolute in all these four petitions.

28. In view of the fact that this Court has quashed and set aside the order passed below an application Exh.5 in the respective Lavad Suits and has also held that the Lavad Suits are not maintainable and the learned Registrar, Board of Nominees, Vadodara has no jurisdiction to entertain the said Lavad Suits, the order passed below pursis Exh.17 on 20.05.2003 in respective Lavad Suits do not survive and challenge made against the said order in Special Civil Applications No. 7165, 7166 and 7176 of 2003 has become infructuous. Accordingly, these petitions are dismissed as having become infructuous. Notice in each of these petitions is discharged.

29. In view of the order passed in Special Civil Applications No. 7165, 7166 , 7176 of 2003, Civil Applications No. 3548, 3549 and 3550 of 2003 do not survive and hence, they are accordingly disposed of.

30. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

31. After the pronouncement of the above order/ judgment, learned Senior advocate Mr. N.D. Nanavati for the petitioners in Special Civil Applications No. 7165, 7166 and 7176 of 2003 prays for stay against the operation and implementation of the order, as the aggrieved parties desire to challenge it before the Division Bench of this Court. Looking to the issues involved, I accept this prayer and hence, the operation and implementation of the order passed today is stayed for a period of two weeks from today and ad-interim relief granted earlier on 28.05.2003 in Special Civil Applications No. 7165, 7166 and 7176 of 2003 to continue for a period of two weeks from today.

32. As far as Special Civil Application No. 5592/03 is concerned, the respondent No.2 therein has not challenged the order dtd. 20.05.2003 passed by the learned Registrar, Board of Nominees, Vadodara below pursis Exh.17 in Lavad Case No. 419 of 2003. However,

the statement is made at the bar that the contract between the parties still exists and hence status quo to continue for two weeks from today.

(K. A. Puj, J.)
#Savariya#